

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13466 of Helen Mohler and Paul Grace, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Section 3104), the height in stories requirements (Sub-section 3201.1), the lot area and width requirements (Sub-sections 3301.1 and 7615.2) and the lot occupancy requirements (Sub-sections 3303.1 and 7615.2) for a proposed theoretical subdivision and new residential development comprising six-three unit apartment houses in an R-4 District at the premises 400-410 F Street, N.E., (Square 810, Lots 41-44, 85-87 and 810).

HEARING DATE: April 22, 1981

DECISION DATE: May 6, 1981

FINDINGS OF FACT:

1. At the public hearing of April 22, 1981 the Board granted the applicants permission to amend their application. The applicants no longer requested a variance from the height in stories requirement of the Zoning Regulations. The applicants, however, seek a variance from Sub-section 7204.1 of the Zoning Regulations which requires that all required parking spaces shall be at least nine feet in width.

2. The subject site is located on the northeast corner of the intersection of F and 4th Streets., N.E. and is known as premises 400-410 F Street, N.E. It is in an R-4 District.

3. The site is basically square in shape and generally flat. It consists of 9,802.45 square feet of lot area.

4. The site is improved with a small one-story structure on the southwestern corner. The remainder of the site is enclosed by an eight foot concrete block wall topped with barbed wire. Most recently the site was used as a coal yard.

5. To the north and east, the site adjoins two-story row houses. The northeastern corner of the site abuts a ten foot wide public alley for a distance of thirty feet.

6. The land to the east, west, and north of the site is predominantly used for row dwellings. The majority of the row dwellings in the immediate vicinity are two-stories in height. There are some apartment houses in the neighborhood which appear to have been constructed prior to May 12, 1958, the effective date of the present Zoning Regulations. The block immediately to the south of the site, across F Street, is entirely occupied by the Stuart Junior High School and grounds. The actual school structure is set back approximately 150 feet from F Street. The space between the structure and F Street is enclosed by a chain link fence and used for recreation.

In this area, F Street generally follows the base of Capitol Hill. The site is zoned R-4, the predominant residential zoning throughout the Capitol Hill area. The H Street commercial corridor, two blocks to the north, zoned C-2-A, is the nearest zoning district allowing more intensive land use.

7. The proposed development is for six three-unit apartment buildings similar in floor plan and sharing party walls. The first floor would be English basement in style with direct access to the street. The second floor would constitute one unit, as would the third and fourth floors combined. Access to these upper two units would be by a common entrance at the second floor level. In an R-4 District the most intensive new residential development permitted as a matter-of-right is a flat.

8. The proposed development would have individual lots ranging in area from 1633.28 square feet to 1733.60 square feet. The lot widths would range from 16.76 feet to 17.50 feet. As the proposed development is defined as an apartment or multi-family dwelling, it is subject to the lot area and width requirements for "other structures," as set forth in Sub-section 3301.1. The minimum required lot area therefore, is 4,000 square feet and the minimum lot width is forty feet. The most intensive new residential development permitted in an R-4 District, a flat, requires a minimum of 1,800 square feet of lot area and eighteen feet of lot width.

9. Each of the proposed structures would occupy 770 square feet. Lot occupancies for the proposed structures range from 44.42 percent to 47.14 percent. The maximum allowed lot occupancy for "other structures" in an R-4 District is forty percent. The R-4 zoning allows a maximum lot occupancy of sixty percent for row dwellings and flats.

10. The applicants testified that they seek permission for eighteen units since anything less would not be feasible economically. The applicants further testified that they considered other forms of development such as single family houses and flats but such designs would have to be sold at prohibitive prices that would not be obtainable for the subject site and neighborhood. The applicants expect at least a ten to twelve percent return. The applicants testified that the site now constitutes a blight on the neighborhood and the proposed development would be an improvement. They further testified that the proposal would create greater revenue for the D.C. Government. The applicants submitted a petition with fourteen signatures in favor of the application. The applicants testified that they could develop the site without the need for variances if they redesigned the dwellings and reduced the number of units.

11. The Office of Planning and Development, by report filed April 8, 1981, recommended that the application be denied. In its report, the OPD stated that Paragraph 8207.11 of the Zoning Regulations, regarding variances, states that where, by reason of exceptional narrowness, shallowness, or shape of a piece of property, or by reason of some condition of that property, the strict application of the

Zoning Regulations would cause the owner undue hardship or practical difficulties, a variance may be granted. The site that is the subject of this application has no unusual characteristics that would warrant the granting of a use variance. No variance of this nature has been granted in the immediate area in an R-4 District for a property conforming, as does this one, with respect to the most intensive residential development allowed as a matter-of-right. The adjoining non-conforming lots are not a mitigating factor, as the site in this case is free of any constraints due to size, or shape. The OPD stated that no compelling argument has been offered as to why this site should be developed to a use more intensive than surrounding uses or those allowed in an R-4 District. The Office of Planning and Development recommended that the application be denied due to the over-intensification that would result from the construction of apartment buildings containing a total of eighteen units, as compared to the twelve that could be developed requiring relatively slight lot size and lot width variances. The Board concurs in the findings and recommendations of the OPD report.

12. The Capitol Hill Restoration Society, by letter dated April 15, 1981, opposed the use variance sought for a proposed development on this site. Such a variance would allow three units per building in the project. The Society felt that while the project itself was a good one, and the residential buildings planned were well-designed, the three units per building was too great a density for this R-4 zoned neighborhood. The precedent which would be set by this level of density, carried through six buildings, and the detrimental effect that this zoning precedent would have on the neighborhood, were not justified by the provisions of the Zoning Regulations cited in the application. The Society expressed some hope that the applicants might be able to propose a project similar to the one proposed, save the three units per building. Such a project could be an asset to the neighborhood, and the Society suggested that a twelve unit project could still be developed profitably for the owners and developers. The Society voted not to take a position on the other variances sought in this application. The Board concurs in the Capitol Hill Restoration Society's recommendation.

13. The Stanton Park Neighborhood Association, by letter of April 14, 1981 and testimony at the public hearing, reported that the Association voted to oppose two of the variances sought by the applicants in BZA Case #13466. Since the time of the Association's meeting, the application was amended, leaving one count of opposition from the Association. The Association noted that six townhouses proposed by the developers, each with a parking space and patio, would improve the residential neighborhood. However, those attending the Stanton Park meeting felt, along with some neighbors, that the three units proposed for each building were far too many. It was felt that there would be an immediate negative impact from the eighteen total units, as well as an unfortunate precedent set by granting a variance on this scale from the R-4, two-units-per-building standard of the surrounding neighborhood. The Board concurs with the Stanton Park Neighborhood Association.

14. Advisory Neighborhood Commission 6A, by letter dated April 9, 1981, opposed the variance to allow three-unit dwellings to be built on the site in question. The grounds were the subject area is a residential area that the zoning law has set for single family homes. The law provides for some flexibility by allowing those homes to include one additional unit. Dwellings of more than two units may not be built unless there is some justification for the variance. In the subject case no justification for departing from the existing pattern of the neighborhood has been shown. The developers claim that, given the price of the land, the project is economically infeasible if less than three units are included in each structure. The ANC argued that if the Board allow structures to be built on this site that vary from the established zoning pattern, the site may command a high price. In other words, the rationale given for the variance is to allow the owner of the site to sell it to the developer at an inflated price. The ANC argued that personal gain is not sufficient reason to justify granting the variance. The Board concurs with the ANC recommendation.

15. There were letters of record in opposition to the application, including one from an owner directly across the street from the subject site. The grounds of opposition were the same as above stated by the neighborhood associations.

16. There was some support for the application on the grounds that any development would be an improvement to the present appearance of the site.

CONCLUSIONS OF LAW AND OPINION:

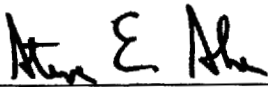
Based on the record the Board concludes that the applicants are requesting a use variance and area variances, the granting of which requires proof that there is a hardship and a practical difficulty, respectively, in the subject property. The Board concludes that there is no such hardship or practical difficulty. The site is basically unimproved, flat and rectangular in shape. The applicants testified that the site could be developed in conformance with the Zoning Regulations but that such development would not be feasible economically. Economic feasibility is not the type of hardship that would support a use variance. There is nothing peculiar about the site that would support the grant of the area variances requested. The Board notes the opposition to the application. The Board further concludes that the relief requested cannot be granted without substantial detriment to the public good, without substantially impairing the intent, purpose and integrity of the zone plan and without adverse affects to the use of neighboring properties. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (John G. Parsons and Connie Fortune to deny, Douglas J. Patton and William F. McIntosh to deny by proxy, Charles R. Norris not present, not voting).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 2 SEP 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."